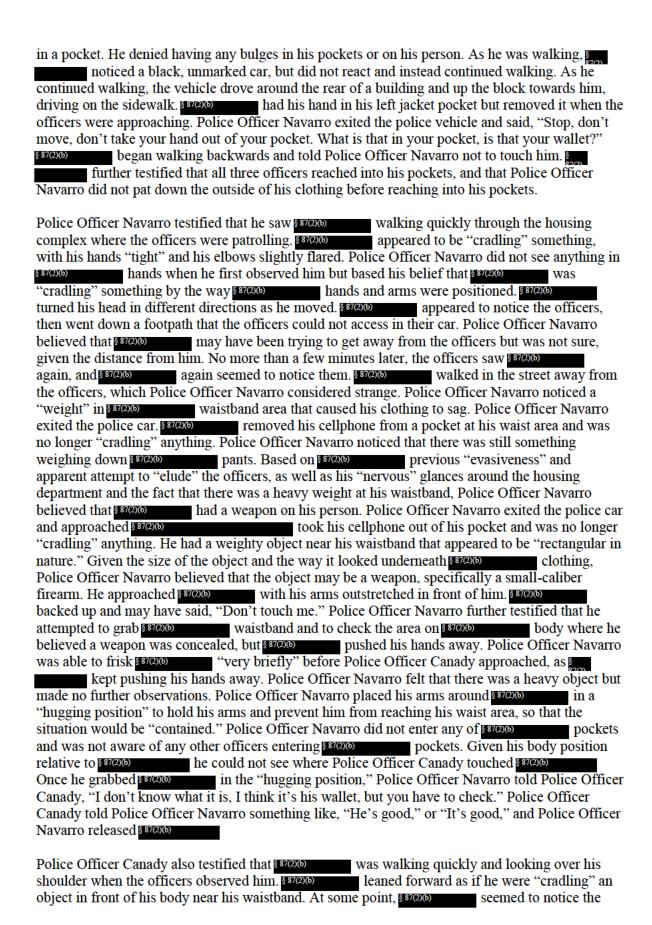
## CCRB INVESTIGATIVE RECOMMENDATION

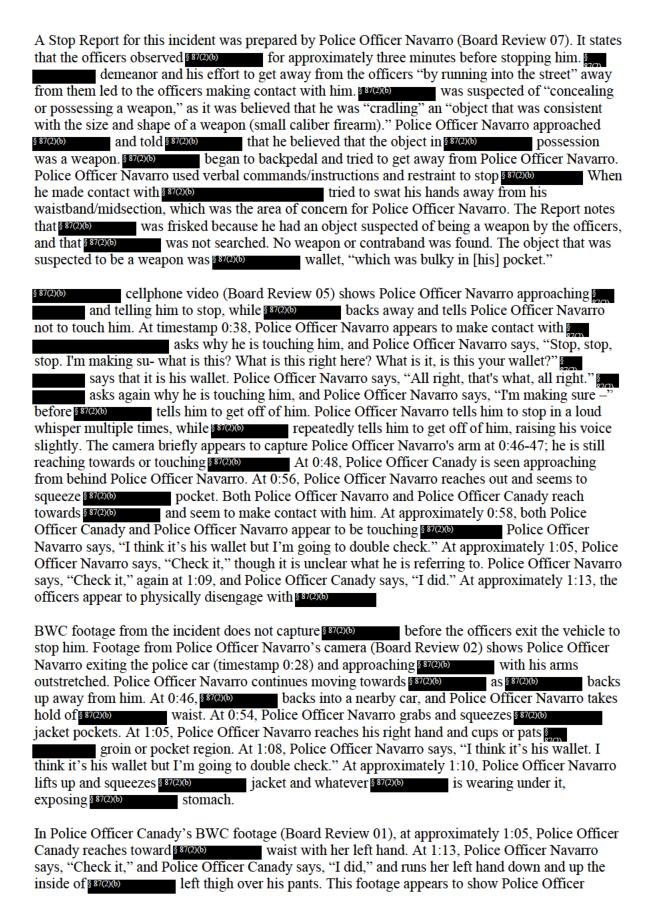
Investigator:		Team:	CCRB Case #:		Force		Discourt.		U.S.
Rachel Murgo		Squad #02	202100558	V	Abuse		O.L.	V	Injury
Incident Date(s)		Location of Incident:			18 N	lo. SC	DL	P	recinct:
Thursday, 01/07/2021 1:26 AM		Pacific Street and Buffalo Avenue		7/7/2022		2		77	
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	e Rece	ived at CCI	КВ	
Mon, 01/25/2021 6:58 PM		CCRB	Call Processing System		Mon, 01/2	25/202	1 6:58 PM		
Complainant/Victim	Туре	Home Addre	ss						
Subject Officer(s)	Shield	TaxID	Command						
1. PO Joshua Navarro	16066	957891	075 PCT						
2. DTS Nicki Canady	02568	960316	PBBN SU						
3. PO Andrew Tofalli	26431	955584	077 PCT						
Officer(s)	Allegatio	on			Inv	estiga	tor Recon	ıme	ndation
A . PO Joshua Navarro	Abuse: P	olice Officer Joshua Na	varro stopped § 87(2)(b)						
B . DTS Nicki Canady	Abuse: P	l Olice Officer Nicki Cana I	ady stopped § 87(2)(6)						
C . PO Joshua Navarro	Abuse: P	olice Officer Joshua Na 	varro frisked § 87(2)(6)						
D . DTS Nicki Canady	Abuse: P	olice Officer Nicki Cana	ady frisked § 87(2)(6)						
E . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro searched § 87(2)(b)								
F . DTS Nicki Canady	Abuse: Police Officer Nicki Canady searched \$87(2)(0)								
G . PO Andrew Tofalli	Abuse: Police Officer Andrew Tofalli searched \$87(2)(6)								
H . DTS Nicki Canady	Abuse: Police Officer Nicki Canady strip-searched								
I . DTS Nicki Canady	Abuse: Police Officer Nicki Canady interfered with use of a recording device.								
J . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro failed to provide with a business card.								
K . DTS Nicki Canady	Abuse: P § 87(2)(b)	olice Officer Nicki Cana with a busine		:					
§ 87(2)(g), § 87(4-b)									
§ 87(2)(g), § 87(4-b)									
§ 87(2)(g), § 87(4-b)			_						

## **Case Summary**

On January 25, 2021, 187(2) filed this complaint with the CCRB via telephone. The case was initially assigned to Investigator Evan Tims but was reassigned to Investigator Rachel Murgo on May 21, 2021, upon Investigator Tims' resignation from the Agency.
Was walking outside through the  STOND  Housing complex when he was approached by an unmarked police vehicle. Inside the vehicle were Police Officer Joshua Navarro of the 75th Precinct, Police Officer Nicki Canady of the 81st Precinct, and Police Officer Andrew Tofalli of the 77th Precinct. Police Officers Navarro and Canady exited the vehicle and stopped (Allegations A and B: Abuse of Authority – Stop – Police Officer Navarro and Police Officer Canady then frisked  (Allegations C and D: Abuse of Authority – Frisk – Police Officer Navarro, Police Officer Canady, and Police Officer Tofalli then searched  (Allegations E and F: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady allegation G: Abuse of Authority – Search – Police Officer Canady pushed his phone away from her (Allegation I: Abuse of Authority – Interference with  recording – Police Officer Navarro and Police Officer Canady failed to provide With business cards or the required information verbally in lieu of a business card (Allegations J and K: Abuse of Authority – Failure to provide RTKA card – Police Stopped S
Body-worn camera (BWC) footage from the cameras of Police Officer Navarro, Police Officer Canady, and Police Officer Tofalli is linked to IAs #38-40 (Board Review 01-03) and summarized in IA #74 (Board Review 04). Cellphone camera video taken and submitted by [8870] is linked to IA #12 (Board Review 05) and summarized in IA #60 (Board Review 06).
Findings and Recommendations
Allegation (A) Abuse of Authority: Police Officer Joshua Navarro stopped \$87(2)(6) Allegation (B) Abuse of Authority: Police Officer Nicki Canady stopped \$87(2)(6) Allegation (C) Abuse of Authority: Police Officer Joshua Navarro frisked \$87(2)(6) Allegation (D) Abuse of Authority: Police Officer Nicki Canady frisked \$87(2)(6) Allegation (E) Abuse of Authority: Police Officer Joshua Navarro searched \$87(2)(6) Allegation (F) Abuse of Authority: Police Officer Nicki Canady searched
Allegation (G) Abuse of Authority: Police Officer Andrew Tofalli searched
was interviewed by telephone on February 5, 2021 (Board Review 08). Police Officer Canady was interviewed at the CCRB on September 7, 2021 (Board Review 09). Police Officer Tofalli was interviewed at the CCRB on December 22, 2021 (Board Review 10). Police Officer Navarro was interviewed at the CCRB on February 10, 2022 (Board Review 11).
It is undisputed that \$87(2)(6) had a wallet in his pocket, and that Police Officer Navarro and Police Officer Canady stopped \$87(2)(6)
testified that he had nothing on his person besides his phone in his hand and his wallet



Police Officer Canady could not see what strong and did not have a sense of the object's size or shape. As the officers observed strong they communicated to each other that they "suspected [that] he had something, preferably a firearm." Police Officer Canady believed that had a firearm, specifically, given the time of night, the pace at which he was walking, and the way strong was looking around. After the officers lost sight of strong and then saw him again from nearer, strong again appeared to be cradling an object. Police Officer Canady was able to observe strong from the front and saw "a big bulge" in his coat pocket. The bulge appeared to be "something big poking out forward from his jacket pocket," and
"almost looked kind of like an L-shaped bulge." Though the item protruded from pocket rather than being fully inside his pocket, Police Officer Canady could not observe any further details about the object that specific appeared to be holding, like the object's color or
material. Aside from the time of night, the pace of movements, and the apparent bulge that Police Officer Canady observed, there were no other reasons why she suspected that had a firearm. Police Officer Navarro exited the police vehicle and began approaching had a firearm.
trying to explain to \$87(2)(6) why he was stopping him. \$87(2)(6) backed up away from Police Officer Navarro, while Police Officer Navarro approached him and said that he was trying to see if \$87(2)(6) had a weapon in his coat and that it looked like \$87(2)(6) had a weapon \$88(2)(6) had his hands up with his cell phone in one hand. He still had the hulge in his
had his hands up with his cell phone in one hand. He still had the bulge in his pocket at this point. Police Officer Canady was unable to observe anything else about the bulge while had his hands up. When Police Officer Navarro approached tried to smack Police Officer Navarro's hands away. Police Officer Canady then exited the police vehicle and approached making no further observations as she approached. Police Officer Canady frisked touching his waistband area, left jacket pocket, and the outside of his left leg going up towards his waistband. Police Officer Navarro grabbed
jacket pocket; Police Officer Canady was not aware of Police Officer Navarro making contact with any other part of person during his frisk. By frisking person during his frisk person during his
Police Officer Tofalli testified that Police Officer Navarro told him to stop the vehicle, then approached He did not recall making any observations of before Police Officer Navarro exited the vehicle. He did not recall any conversation among the officers before Police Officer Navarro exited the vehicle. Police Officer Tofalli did not recall observing the bulge on person. He learned that Police Officer Navarro had noticed a bulge in jacket when he (Police Officer Tofalli) exited the vehicle, and Police Officer Navarro was searching front jacket pocket, where the alleged bulge was. Other than Police Officer Navarro observing a bulge on person, Police Officer Tofalli was not aware
of any other reason why save was stopped. Police Officer Tofalli initially testified that Police Officer Navarro tried to pat down the pocket where he had seen a bulge, then testified that Police Officer Navarro patted down the pocket. He did not recall Police Officer Canady patting down any of pockets. Police Officer Tofalli never frisked or made any physical contact with him. Police Officer Tofalli did not recall Police Officer Navarro ever entering any of pockets. To his knowledge, Police Officer Canady did not enter any of pockets. Police Officer Tofalli never entered any of pockets.



Canady removing her hand from [870] left pants pocket at approximately 1:14. Police Officer Tofalli does not appear to make contact with [870] at any point.

<u>People v. DeBour, 40 N.Y.2d 210 (1976)</u> outlines the requirements for an officer to conduct a stop of an individual. Officers must have reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor in order to forcibly stop and detain that person (Board Review 17). The officers may frisk the stopped individual if they reasonably suspect that the person is armed. It further states that behavior that is susceptible to innocent as well as culpable interpretation will not constitute probable cause, and that innocuous behavior alone does not generate a founded or reasonable suspicion that a crime is at hand.

<u>People v. Jones, 164 A.D.3d 1363 (2018)</u> states that a circumstance such as a person having a nondescript bulge in their jacket pocket, leaning to one side, and walking away from officers without complying with the officer's requests for the person to stop, did not support a reasonable suspicion of particularized criminal action. It further clarifies that a bulging jacket pocket is not indicative of criminality, as a pocket bulge, in contrast to a waistband bulge, could be caused by an innocuous object. (Board Review 20).

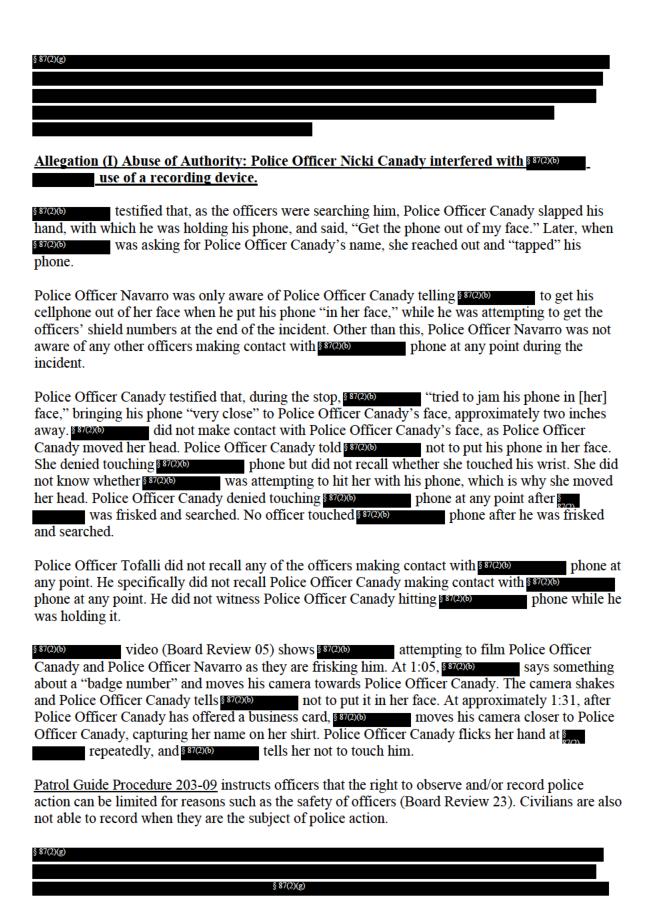
<u>People v. Howard, 147 A.D.2d 177 (1989)</u> states that officers are authorized to frisk when they reasonably suspect that they are in danger of physical injury by virtue of the person they are detaining being armed. It also notes that the observation of an unidentifiable bulge in a person's pocket is insufficient as a basis for a frisk or search for a gun (Board Review 18).

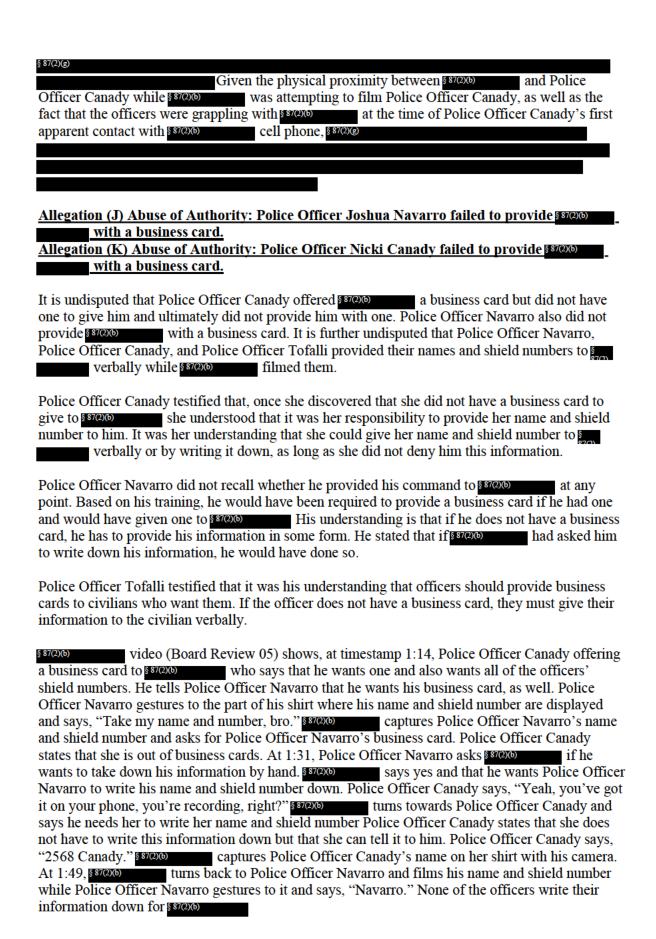
<u>People v. Kennebrew, 106 A.D.3d 1107 (2013)</u> further states that an unidentifiable bulge that is readily susceptible to an innocent as well as a guilty explanation is not sufficient to justify a patdown search (Board Review 19).

Patrol Guide Procedure 212-11 instructs that officers may conduct a Terry Stop/Level 3 encounter, in which a reasonable person would not feel free to disregard the officer and walk away, if they have an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor (Board Review 15). A frisk requires that the officers have a reasonable suspicion that the individual is armed. This procedure defines a search after a frisk as when the officer places their hands inside a pocket or other interior portions of a person's clothing or personal property to remove an object that the member felt during a frisk and reasonably suspects is a weapon or dangerous instrument (Board Review 15).

As mentioned above, it is undisputed that Police Officer Navarro and Police Officer Canady
stopped \$87(2)(b) citing \$87(2)(b) posture and apparent movement away from the
officers, as well as the jacket pocket bulge the officers eventually observed once they came closer
to \$87000 had a firearm. The investigation
did not credit Police Officer Canady's testimony that she saw an L-shaped bulge, specifically, given
that \$87(2)(6) and Police Officer Navarro's testimonies were consistent as to the fact that
only had his wallet and cell phone with him (neither of which were L-shaped) and the fact
that Police Officer Canady could provide no further details about the L-shaped object she
reportedly saw protruding from \$87(2)(b) pocket. \$87(2)(g)

Police Officer Navarro and Police Officer Canady frisked \$37000
It is worth noting, however, that as Police Officer Navarro first made contact with \$\$\\ \text{\$\sqrt{\$\sq}}}}}}}}}}}} \end{\sqrt{\$\sqrt{\$\sqrt{\$\sqrt{\$\sqrt{\$\sqrt{\$\sq}
Given that footage from the incident shows Police Officer Navarro lifting clothing, exposing his stomach, and appears to show Police Officer Canady removing her hand from pocket, the investigation credited that Police Officer Navarro and Police Officer Canady searched As noted, the frisk of did not uncover anything that could be reasonably suspected of being a weapon or other dangerous instrument. No weapons were ultimately recovered from saverous and it was determined that he only had his wallet and phone with him.
Allegation (H) Abuse of Authority: Police Officer Nicki Canady strip-searched \$ \$7(2)(6)
Anegation (11) Abuse of Authority. Fonce Officer Nicki Canady strip-scarcined subso
testified that, during the incident, Police Officer Canady reached beneath his pants and beneath his underwear, directly touching his skin. She touched his penis and his scrotum and "moved them out of the way," seemingly to check if he had anything beneath his scrotum. This contact lasted approximately three to four seconds.
Police Officer Navarro was not aware of Police Officer Canady reaching inside pants and undergarments and making contact with his genitals. He never reached under clothing.
Police Officer Canady denied reaching her hand underneath pants at any point. She denied reaching inside (\$87(2)(6)) underwear and making contact with his skin at any point.
Police Officer Tofalli did not recall Police Officer Canady putting her hand inside pants. He did not recall hearing same complain that an officer entered his pants at any point.
BWC footage from this incident does not capture Police Officer Canady putting her hand into pants. Solve video also does not capture a strip search. Based on the totality of the video footage, it appears that a strip search, as described by solve does not happen during this incident.





BWC footage from this incident captures most of what is captured in Salow video. Police Officer Tofalli's footage (Board Review 03) shows, at 1:04, Police Officer Tofalli appearing to look in the vehicle for a business card before stating that he does not have one. At 1:27, Police Officer Tofalli gives his name and shield number twice. Salow comes over and points his cell phone at Police Officer Tofalli, then walks away.

New York City Administrative Code 14-174 instructs that officers must identify themselves when stopping, frisking, and/or searching an individual, providing their name, rank, and command. It further requires officers to offer a business card to the subject of the police action if the stop, frisk, and search do not result in an arrest or summons (Board Review 21).

<u>Patrol Guide Procedure 212-11</u> instructs officers to offer an RTKA business card after conducting a level 3 stop (Board Review 15).

It is undisputed that Police Officer Navarro and Police Officer Canady did not provide business cards to secause they were out of business cards. While they provided their names and shield numbers verbally in lieu of the business cards, the officers failed to verbally provide their ranks and commands to secause they were out of business cards. While they provided their names and shield numbers verbally in lieu of the business cards, the officers failed to verbally provide their ranks and commands to secause they were out of business cards. While they provided their names and shield numbers verbally in lieu of the business cards and as is required by Administrative Code §14-174.
§ 87(2)(g), § 87(4-b)
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Civilian and Officer CCRB Histories

CCRB Case # 202100558

12 add	Officer Canady has been a mem itional CCRB complaints and 34		
substai o	ntiated in two cases.		
0	202100913 involved a substant against Police Officer Canady. and the NYPD has not yet imp	The Board recommended Co	
in nine substan	Officer Navarro has been a men additional CCRB complaints and tiated in two cases:  201808163 involved a substant Formalized Training, and the Navarro 202000571 involved two substantiated allegations of frist recommended Charges and the same officer Tofalli has been a membradditional CCRB complaints and intiated.	ad 36 additional allegations, of the stated allegation of a frisk. The stated allegation of a frisk. The stated allegations of physical sk, search (of person), and stop NYPD has not yet imposed of the service for eight years a	f which six were e Board recommended raining. al force, and p. The Board liscipline. and has been a subject
	Mediation, Civi	l, and Criminal Histories	
Notice	declined to mediate this of November 9, 2021, the New Yor of Claim being filed in regard to	k City Office of the Comptrol	
Squad:	2		
Investigator:	Rachel Murgo Signature	Inv. Rachel Murgo Print Title & Name	12 April 2022 Date
Squad Leader:	Alexander Opoku-Agyemang Signature	IM Opoku-Agyemang Print Title & Name	4/12/2022 Date

Print Title & Name

Signature

Reviewer:

Date